

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

TEXAS GUARANTEED STUDENT §
LOAN CORPORATION d/b/a §
TRELLIS COMPANY, §
Plaintiff, §
§
V. § NO. 4:19-CV-00185
§
JABBERCOMM INC. §
Defendant. §

**PLAINTIFF TEXAS GUARANTEED STUDENT LOAN CORPORATION'S
ORIGINAL COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Texas Guaranteed Student Loan Corporation d/b/a Trellis Company ("TGSLC"), and files this Original Complaint seeking relief against the Defendant, Jabbercomm Inc. (the "Defendant") and would show the Court as follows:

PARTIES

1. TGSLC is a non-profit corporation and has the power to prosecute this suit. *See* TEX. EDUC. CODE § 57.011; TEX. BUS. ORG. CODE § 2.101(1).

2. The Defendant is a corporation that may be served with process through its registered agent, Sharon K. Morris, at 1111 Jupiter Road, Suite 106A, Plano, Texas 75074 or 3125 Point East, Mesquite, Texas 75150.

JURISDICTION

3. This Court has jurisdiction to hear this Complaint pursuant to 28 U.S.C. § 1331, as a civil action arising under 20 U.S.C. § 1095a(a)(6).

VENUE

4. Because the Defendant is a resident of Collin County, Texas, venue for this action is proper in this District pursuant to 28 U.S.C. §§ 124(a), 1391(c).

FACTUAL ALLEGATIONS

5. Under Title IV, Part B of the Higher Education Act of 1965, Congress enacted a program in which the federal government encouraged the making of loans by private lenders to eligible students to finance the students' postsecondary education. *See* 20 U.S.C. §§ 1071(a), 1085(d). The federal government encourages the making of these loans by having the U.S. Secretary of Education ("the Secretary") pay part of the student's interest costs and guarantee repayment of the loan if the student defaults. *Id.* § 1078(a), (c). This program is presently known as the Federal Family Education Loan Program ("the Loan Program").

6. To assist the Secretary in implementing and operating the Loan Program, Congress provides that the Secretary may enter into agreements with guaranty agencies. *See*, 20 U.S.C. § 1085(j). A guaranty agency guarantees payment of a loan made by an eligible lender and pays the holder of the loan if the student defaults. The Secretary then reimburses the guaranty agency for all or part of these payments under a reinsurance agreement with the agency. *Id.* § 1078(c). Guaranty agencies also receive funds to administer the program on behalf of the Secretary, including collecting defaulted student loans upon which the guaranty agency has paid the holder and received reimbursement from the Secretary. *Id.* § 1078(c)(2); 34 C.F.R. § 682.410(b). When a guaranty agency collects money on a defaulted student loan, it sends the majority to the Secretary

and retains a portion of the money to defray its costs of collection. 20 U.S.C. § 1078(2)(D).

7. To assist the Secretary and guaranty agencies in collecting defaulted student loans, in 1991 the U.S. Congress gave these entities the authority to administratively issue orders to defaulted borrowers' employers requiring the withholding of up to fifteen percent of the disposable pay of these borrowers. *See* 20 U.S.C. § 1095a. This section explicitly preempts state laws and sets out procedures for providing students with due process, including prior notice of the agency's intent to withhold, a hearing if requested, and the issuance of a withholding order. 20 U.S.C. § 1095a(a), (b); *see also* 34 C.F.R. § 682.410(b)(10). This section also provides that guaranty agencies may sue employers who do not deduct and pay over wages to the agency as directed in the withholding order. 20 U.S.C. § 1095a(a)(6); *see also* 34 C.F.R. § 682.410(b)(10)(i)(F).

8. TGSCLC is a guaranty agency and has entered into a reinsurance agreement with the Secretary in accordance with 20 U.S.C. § 1078(c). Pursuant to its authority under this agreement and former section 57.41(a) of the Texas Education Code, TGSCLC guaranteed certain student loan promissory note(s) for Britanni L. Smith ("Borrower"). Pursuant to its guarantees, TGSCLC paid the note holder(s) and received an assignment of the note(s). TGSCLC also received reinsurance from the Secretary and undertook collection of the notes.

9. Borrower is employed by Defendant and earns at least the minimum wage (\$7.25) per hour and works at least 40 hours per week.

10. As part of its collection efforts, TGSLC instituted proceedings to withhold a portion of the Borrower's wages from the Defendant. TGSLC performed all conditions necessary to issue a wage withholding order.

11. TGSLC issued a wage withholding order on August 16, 2018. A true and correct copy of that order is attached as Exhibit "A."

12. TGSLC sent Defendant a notice on November 28, 2018 requesting compliance with the original order, along with a copy of the original order. Attached as Exhibit "B" is a true and correct copy of that subsequent notice.

13. Also on November 28, 2018, an employee of TGSLC spoke with Rick with Defendant and Rick stated that Defendant was not going to implement the wage withholding order and said not to call anymore.

14. TGSLC sent Defendant an additional notice on January 22, 2019 requesting compliance with the original order. Attached as Exhibit "C" is a true and correct copy of that additional notice and the signed receipt.

15. On February 14, 2019 TGSLC's outside counsel sent a letter to Defendant and on February 26, 2019, March 6, 2019 and March 12, 2019 TGSLC received withholding payments of \$91.00, 91.20 and 91.20, respectively.

16. Defendant has failed and refused to fully comply with the withholding order and has not withheld the appropriate portion of the wages of the Borrower, its employee.

VIOLATION OF 20 U.S.C. § 1095a

17. Based upon the foregoing allegations, Defendant is in violation of 20 U.S.C. § 1095a by refusing and failing to withhold the appropriate portion of the wages of the Borrower, its employee. This provision of federal law allows guaranty agencies, such as TGSLC, to administratively garnish fifteen percent of

the disposable pay of defaulted student loan borrowers by issuing a wage withholding order to the borrower's employer.

18. Because Defendant has refused to fully comply with the order sent to it by TGSLC to withhold a portion of the wages of the Borrower, Defendant is liable for any and all amounts it failed to withhold following receipt of the order in this case. 20 U.S.C. § 1095a(a)(6). This amount would be either fifteen percent of the Borrower's disposable pay or such lesser amount as is dictated by 15 U.S.C. § 1673, from the date of Defendant's receipt of the withholding order to the date the Borrower ceases to be employed by Defendant or the date this Court enters judgment, less any payments already remitted.

19. Plaintiff is also entitled to its attorneys' fees and court costs as a result of hiring the undersigned counsel to prosecute this suit. 20 U.S.C. § 1095a(a)(6).

20. Because Defendant was fully aware of the existence of the wage withholding order and failed to fully comply with the order, Plaintiff is entitled to punitive damages as provided by 20 U.S.C. § 1095a(a)(6).

WHEREFORE, PREMISES CONSIDERED, TGSLC respectfully requests this Court to grant TGSLC:

- a. Damages from Jabbercomm Inc. for the amount of money it should have paid over to TGSLC out of the wages of the Borrower.
- b. Postjudgment interest on this amount as allowed by law;
- c. Reasonable attorneys' fees and costs of court;
- d. Punitive damages as determined by the Court; and
- e. Such other and further relief to which TGSLC may show itself entitled.

Respectfully submitted,

RAY & WOOD

By: 

Doug W. Ray
State Bar No. 16599200

2700 Bee Caves Road, Suite 200
Austin, Texas 78746

(512) 328-8877 (Telephone)
(512) 328-1156 (Fax)
dray@raywoodlaw.com

**ATTORNEYS FOR PLAINTIFF TEXAS
GUARANTEED STUDENT LOAN
CORPORATION d/b/a TRELLIS
COMPANY**



**IN RE
STUDENT LOAN DEBT OF
BRITTANI L SMITH, DEBTOR**

§
§
§

EMPLOYER:
JABBERCOMM INC PAYROLL
1111 JUPITER RD STE 106A
PLANO, TX 75074-8406

ORDER OF WITHHOLDING FROM EARNINGS

Pursuant to authority granted the Texas Guaranteed Student Loan Corporation/Trellis Company (Trellis) by federal law (Public Law 102-164; as amended by Public law 109-171; 20 U.S.C. §1095a et seq.) as the current holder of the debt identified below, **YOU**, the employer of the debtor named below, **ARE HEREBY ORDERED AND DIRECTED** to withhold income from the debtor's disposable pay from this employment for payment of defaulted student loan(s), as follows:

Debtor: BRITTANI L SMITH

Address: 13920 COUNTY ROAD 4041
SCURRY, TX 75158-4379

Case Number: [REDACTED] 7300
SSN#: [REDACTED] -9948
Total Amount \$6,674.65
Currently Due:

Amount to Withhold:

Employer **SHALL DEDUCT AND PAY TO TRELLIS** from the debtor's wages fifteen percent (15%) of the debtor's disposable pay for each pay period, or the amount permitted by 15 U.S.C. 1673, unless the debtor provides Trellis with written consent to deduct a greater amount. **This amount SHALL be deducted** until the amount set forth above as the "Total Amount Currently Due", plus all further accrued interest, is fully paid.

Time for Withholding:

Employer is **DIRECTED to begin withholding** from the debtor's disposable pay beginning with **the first pay period** that occurs after the issuance of this Withholding Order.

Method of Payment:

Employer is **DIRECTED TO PAY all amounts withheld** on each regular pay day, no less frequently than once each month, to:

Trellis Company
P.O. Box 659601
San Antonio, TX 78265-9601

All payments **MUST identify** the debtor and the debtor's case number or Social Security number.

Section 488A of the Higher Education Act provides that an employer who fails to comply with a garnishment order issued under this law will be liable for any amounts that are not so withheld following its receipt, in addition to costs of suit as a result of legal action authorized under the law.

THIS ORDER OF WITHHOLDING IS ISSUED BY TRELLIS ON August 16, 2018.

Trellis Company
Email: wagewith@trelliscompany.org



PO Box 83100 Round Rock, Texas 78683-3100 | 800-252-9743 | 512-219-5700 | www.trelliscompany.org

November 28, 2018

JABBERCOMM INC PAYROLL
ATTN: PAYROLL
1111 JUPITER RD STE 106A
PLANO, TX 75074-8406

RE: BRITTANI SMITH, DEBTOR
TRELLIS ACCOUNT # [REDACTED] 7300
CURRENT BALANCE: \$6,690.09

Dear Employer:

On 08/16/2018, the Texas Guaranteed Student Loan Corporation/Trellis Company (Trellis) issued an ORDER OF WITHHOLDING FROM EARNINGS (Order) for BRITTANI SMITH, Debtor, (SSN [REDACTED]-9948) requiring the employer to withhold a percentage of the debtor's wages for payment of defaulted student loan(s). Our records indicate this company employs this debtor. For your reference, a second copy of that Order is enclosed with this Second Notice.

Trellis' records reflect that, as of the date of this second notice, we have not received the wage garnishment payments that the Order requires the employer to make.

Under federal law, Trellis is required to sue any employer who fails to garnish wages after receipt of an Order. If Trellis is forced to file suit, it is entitled to seek not just the amount an employer fails to garnish, but also attorney's fees, costs and punitive damages. Unless Trellis receives your garnishment payment within thirty (30) days after the issuance of this second notice, Trellis must review this matter for further legal action.

If the debtor referenced in the Order no longer works for the employer, you must notify Trellis to preclude liability for failure to comply with the Order. A second Employer Acknowledgement of Wage Withholding Obligation is enclosed with this Second Notice. You must complete the appropriate spaces on the form and return it to Trellis so that the Order may be released.

If you have not sent in a wage garnishment payment for this debtor because the debtor's next pay period following the issuance of the Order has not yet occurred, you must fill out the pay period information on the Employer Acknowledgement and return it to Trellis.

If you have already made the wage garnishment payment(s) for this debtor, please call Trellis at the number listed below to confirm that the payment was received.

Your cooperation is essential to the success of this program.

If you have any questions regarding this second notice or the wage garnishment process, please contact the Administrative Wage Garnishment Team at (800) 252-9743, ext. 4125 or (512) 219-5700, ext. 4125.

This second notice is issued on 11/28/2018.

Regards,
Trellis Company
Email: wagewith@trelliscompany.org

CERTIFIED MAIL # 7018 0680 0001 4133 4840

EXHIBIT B



CERTIFIED MAIL # 7017 2620 0000

5466 5423

Sharon K Morris
Registered Agent
JABBERCOMM INC PAYROLL
1111 JUPITER RD STE 106A
PLANO, TX 75074-8406

RE: Trellis Company Order of Withholding from Earnings issued 08/15/2018; BRITTANI SMITH

Dear Sharon K Morris:

On 08/15/2018, the Trellis Company (Trellis) issued an ORDER OF WITHHOLDING FROM EARNINGS (Order) to your company regarding the defaulted student loan debt of BRITTANI SMITH. The Order requires your company to remit to Trellis fifteen percent (15%) of BRITTANI SMITH's disposable income for payment of his/her debt. To date, your company has failed to comply with the Order. This letter is to notify you that your continued non-compliance will result in Trellis retaining outside counsel to file suit against your company. Pursuant to federal regulation 34 C.F.R. 682.410(b)(9)(i)(P), Trellis must sue employers who have failed to comply with such orders. Enclosed is a copy of the Order for your reference.

Trellis issued this Order pursuant to 20 U.S.C. §1095a. Under this statute your company is required to remit to Trellis fifteen percent (15%) of BRITTANI SMITH's disposable income, or a lesser amount if required by 15 U.S.C. §1673. To date, despite repeated notices, your company has refused to follow the law. It is Trellis' desire to avoid taking legal action and prefers to settle this matter. However, if that is not possible, Trellis will authorize our attorneys to file suit to recover all amounts your company failed to withhold, plus attorney's fees and court costs.

In order to avoid these consequences, you must contact Trellis' Administrative Wage Garnishment (AWG) supervisor within the next fifteen (15) days at (512) 219-4736, or wagewith@trelliscompany.org and make suitable arrangements to settle this matter. Trellis' office hours are Monday through Friday, 8:00 a.m. to 5:00 p.m., Central time.

If you fail to make arrangements to settle this matter, then under applicable federal regulations Trellis will have no choice but to proceed with litigation.

Sincerely,

Greg Dickenson, Legal and Compliance
Trellis Company

Enclosure

cc: David Vargas

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

7017 2620 0000 5466 5423

7300

JABBERCOMM INC PAYROLL

Attn: Payroll/Garnishments

1111 JUPITER RD STE 106A

PLANO, TX 75074-8406

9590 9402 4488 8248 7268 12

2. Article Number (Transfer from service label)

7017 2620 0000 5466 5423

A. Signature
 
 Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery

Date delivery address different from item 1? Yes
 No
 address below:

RECEIVED
 JAN 28 2019

AWG

Delivery

Certified Mail®
 Certified Mail Restricted Delivery
 Collect on Delivery
 Collect on Delivery Restricted Delivery
 Insured Mail
 Insured Mail Restricted Delivery (over \$500)

Priority Mail Express®
 Registered Mail™
 Registered Mail Restricted Delivery
 Return Receipt for Merchandise
 Signature Confirmation®
 Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt